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IN THE

Supreme Court of the United States

October Term, 1973.

No. 73-894.

COMMONWEALTH OF PENNSYLVANIA and PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Petitioners,

v.

JOHN F. NASH, et al.,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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QUESTION PRESENTED.

May a United States District Court properly decline to exercise jurisdiction to grant injunctive relief which would have required a railroad in reorganization under Section 77 of the Bankruptcy Act to expend substantial funds on the grounds that the reorganization court, having concurrent jurisdiction, is the more appropriate forum as it is more conversant with the financial condition of the Debtor and bears the ultimate responsibility for its reorganization, therefore, enabling it to reach a more informed decision.

STATUTES INVOLVED.

Section 1(18) of the Interstate Commerce Act, 49 USC Section 1(18) (the "Act") provides in relevant part that a railroad shall not "abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."

Section 1(20) of the Act provides in relevant part that any abandonment contrary to the provisions of Section 1(18) "may be enjoined by any court of competent jurisdiction at the suit of . . . any commission or regulating body of the State or States affected, or any party in interest."

The full text of the statutes are set forth in Appendix "A" attached hereto.

STATEMENT.

Lehigh Valley Railroad Company (the "Debtor") filed its Petition for reorganization under Section 77 of the Bankruptcy Act on July 24, 1970. The Respondents were subsequently appointed as Trustees and have operated the property of the Debtor since August 12, 1970 subject to the jurisdiction and control of the reorganization court.

Prior to February 28, 1973 the Debtor conducted freight operations over the Montrose Branch running 26 miles through sparsely populated country in northern Pennsylvania from Tunkhannock, Pennsylvania to Montrose, Pennsylvania, delivering approximately six cars on each of two deliveries per week. Over a period of years the railroad has experienced an increasing number of derailments. In November, 1973 derailments became very frequent but with the onset of winter and ground frost, the Debtor was able to continue operations over this line as the frozen ground stopped the track from moving which had

been the cause of most of the derailments. In late February, 1973 with the onslaught of spring conditions and thawing ground, a substantial majority of the trains operating over this line experienced derailments. The Debtor embargoed the line effective at 12:01 a.m. on February 28, 1973 due to dangerous track conditions, giving written notice to the Pennsylvania Public Utility Commission. On March 9, 1973 the Commonwealth of Pennsylvania and the Pennsylvania Public Utility Commission instituted an action in the United States District Court for the Middle District of Pennsylvania seeking an injunction requiring the Debtor to expend the funds necessary to restore the Montrose Branch to safe operable condition.

The hearing on the Complaint was held on March 15, 1973 at which evidence was given that the restoration of the Montrose Branch would require the expenditure of some $96,000 before a train could operate over it without substantial threat of derailment.

The Debtor, with approval of the reorganization court, filed an application for abandonment of the Montrose Branch with the Interstate Commerce Commission on or about March 15, 1973, which application is still pending.

The District Court, after hearing testimony, declined to exercise jurisdiction and dismissed Petitioners' Complaint, leaving the door open for Petitioners to seek injunctive relief in the reorganization court.

The Court of Appeals affirmed on September 7, 1973, emphasizing that the District Court order did not constitute a bar to the bringing of an action in the reorganization court as the District Court did not adjudicate any of the merits raised by the Complaint. The Court of Appeals decision concluded that the reorganization court was better equipped to deal with the merits of the Debtor's claims relating to the abandonment of the Montrose Branch and that therefore the District Court was within the bounds of its discretion in dismissing the Complaint.

REASONS FOR DENYING THE WRIT OF CERTIORARI.

I. The Decision Below Concluding That the District Court Was Within the Bounds of Its Discretion in Dismissing the Petitioner's Complaint Is Clearly Correct and There Is No Conflict of Decision.

The original suit was filed by the Commonwealth of Pennsylvania and its Public Utility Commission in the United States District Court for the Middle District of Pennsylvania for a mandatory injunction to require the Lehigh Valley Railroad Company to expend substantial funds to restore the Montrose Branch to operable condition.

The suit was brought under two sections of the Interstate Commerce Act. Section 1(18) of the Act, 49 *USC* Section 1(18), provides in relevant part that a railroad shall not "abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment." Under Section 1(20) of the Act, 49 *USC* Section 1(20), any abandonment contrary to the provisions of Section 1(18) "may be enjoined by any court of competent jurisdiction at the suit . . . any commission or regulating body of the State or States affected, or any party in interest."

Respondents do not contest that the lower court had jurisdiction to grant an affirmative injunction under 49 *USC* Section 1(20). *Commonwealth of Pennsylvania v. Penn Central Transp. Co.*, 348 F. Supp. 28 (M. D. Pa. 1972); *Meyers v. Jay Street Connecting Railroad*, 259 F. 2d 532 (2d Cir. 1958).

The language of Section 1(20), however, is permissive and gives the District Court discretion to decide whether or

not restoration should be compelled by injunction. *In Re Long Island R. R.*, 92 F. Supp. 85 (E. D. N. Y. 1950); *Asbury v. C & O Ry.*, 314 F. Supp. 310, 312 (D. C. 1970); *Commonwealth of Pennsylvania v. Penn Central Transportation Co., supra*, 30.

In this case the District Court, after a lengthy hearing and on the basis of the facts stated in its Order, simply refused to exercise this discretion in favor of either of the parties on the ground that the reorganization court, which was also a court of competent jurisdiction within the meaning of Section 1(20) of the Act, could exercise a more informed discretion, being more conversant with the financial condition of the railroad and bearing ultimate responsibility for its reorganization. The refusal to exercise jurisdiction in these circumstances was clearly proper. See *New Haven Inclusion Case*, 1970, 399 U. S. 392, 419-430; *Commonwealth of Pennsylvania v. Penn Central Transportation Company*, M. D. Pa. 1972, *supra*, p. 31.

The ultimate decision of whether it is in the interest of the public convenience and necessity to restore the Montrose Branch will be made by the Interstate Commerce Commission acting on the Lehigh Valley's abandonment application. The decision which the Petitioners would demand the lower court to make in this case would require the court to balance the equities between the interests of the shippers seeking to restore service and the expenditure of funds from the estate of the Debtor that might prove to be wasted in the event the Interstate Commerce Commission approves the Debtor's abandonment petition. This balancing of the equities was recognized in *In Re Long Island R. R.*, 92 F. Supp. 85 (E. D. N. Y. 1950); *Asbury v. C & O Ry.*, 314 F. Supp. 310, 312 (D. C. 1970); and *Commonwealth of Pennsylvania v. Penn Central Transportation Co.*, 348 F. Supp. 28 (M. D. Pa. 1972). In all of these

cases the lower court refused to require an expenditure of funds to restore railroad services while an application was pending before the Interstate Commerce Commission to abandon such services fearing that such an order would result in a waste of funds if the Interstate Commerce Commission subsequently permitted abandonment.

The District Court in this case was reluctant to balance the equities that would be required if it were to consider the merits of Petitioners request for an injunction as it was neither conversant with the financial condition of the Debtor nor the progress of its reorganization proceedings and did not have before it all the interested parties to the reorganization proceedings. The court recognized the possibility that the expense to be incurred in the restoration and operation of the Montrose Branch might prove to be a complete waste of the assets of the Debtor in the event that the Interstate Commerce Commission determined that the public interest and necessity would best be served by abandoning the Montrose Branch and that no expenditures could be made by the Trustees of the Debtor without the approval of the reorganization court, *Commonwealth of Pennsylvania v. Penn Central Transportation Co., supra,* p. 31. In light of the issue that was presented to the District Court which would require it to assess the burden upon the Debtor's estate that would result from an order compelling the Debtor to repair the Montrose Branch, the District Court was correct in dismissing Petitioners' Complaint as the Debtor's reorganization court was clearly the most appropriate forum to make such a determination.

II. There Is No Important Issue of Federal Law Involved.

Petitioners have failed to present any facts in their Petition to support their contention that "The Third Circuit has decided an important question of federal law which

should be settled by this court" (Petition, Page 5). Petitioners have misstated the holding of the Lower Court decision when they state on Page 5 of their Petition that, "The decision below requires that public agencies sue in a railroad reorganization court to prevent unlawful cessation of railroad service, rather than in the courts of traditional statutory venue".

The decision of the District Court and the decision of the Third Circuit Court of Appeals did not state that in all situations where a railroad in reorganization has ceased railroad service a petition to enjoin the cessation of service must be filed in the reorganization court. The District Court merely held that under the facts of the particular situation the reorganization court could be considered the more appropriate court in which to hear the Petitioner's request for an injunction. No general rule limiting jurisdiction of the court's of traditional statutory venue was propounded by either the District Court or the Third Circuit Court of Appeals. In fact, the District Court Judge in his order specifically referred to the case of *Pennsylvania v. Penn Central Transportation Co.*, M. D. Pa. 1972, 348 F. Supp. 28 (Petitioner's Appendix B2) wherein the District Court for the Middle District of Pennsylvania found that in the particular fact situation presented to it concerning a requested injunction against a railroad in reorganization the court would assume jurisdiction even though the reorganization court would have been the more appropriate forum.

Therefore, since no general principle of law has been determined by the opinion of the lower court and the Third Circuit Court of Appeals and this Court has previously dealt with the manner in which the issue of concurrent jurisdiction involving railroad reorganization court should be decided, *New Haven Inclusion Cases*, 399 U. S. 392 (U. S. 1969) there is no important issue of federal law involved in this case.

CONCLUSION.

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

WILLIAM R. TRAUB,
for DUANE, MORRIS & HECKSCHER,
Co-Counsel for Respondents, John F. Nash and Robert C. Haldeman, Co-Trustees of the Lehigh Valley Railroad Company, Debtor.

APPENDIX A.

Statutes Involved.

(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this part shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this part over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. Nothing in this paragraph or in section 5 shall be considered to prohibit the making of contracts between carriers by railroad subject to this part, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not

before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.